



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

O-N Minerals (Chemstone) Company – Middletown
Registration #: 80452

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and O-N Minerals Company, for the purpose of resolving certain alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

8. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. "CFR" means Code of Federal Regulations.
10. "Permit" means O-N Minerals' Stationary Source Permit to Modify and Operate, dated August 29, 2006, and amended on December 20, 2006.
11. "Regulation" means the Virginia Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-10-10 et seq.

SECTION C: Findings of Facts and Conclusions of Law

1. O-N Minerals is the owner and operator of the Facility, which is the subject of a Notice of Violation issued on July 16, 2007. On April 30, 2007, a DEQ inspector visited the referenced facility and observed a truck being loaded from the product storage bin using a loading tube without the required air pollution controls. The DEQ inspector observed excessive particulate matter from the loading operation. DEQ issued a Request for Corrective Action (RCA) to O-N Minerals for this observed condition and requested calculations to estimate particulate emissions from the use of the uncontrolled loadout.
2. O-N Minerals responded to the RCA with letters dated June 5, 2007 and June 20, 2007. O-N Minerals stated that the uncontrolled loadout tube had been replaced with a controlled tube and that operators had been trained in the proper use of the loadout. O-N Minerals also stated that the alleged use of the uncontrolled tube may have caused excess emissions. The response from O-N Minerals and the DEQ inspector's observations of the uncontrolled loadout appear to provide credible evidence of the exceedance of emission limits.
3. Condition 3 of O-N Minerals' Permit states that particulate emissions from the sand plant equipment, including the truck-rail loadouts, shall be controlled by fabric filter baghouses. Condition 3 further states that the fabric filters shall be in operation when the equipment is operating. (9 VAC 5-80-1180 and 9 VAC 5-50-260)
4. Condition 13 of O-N Minerals' Permit states that particulate emissions from the operation of the limestone crushing and processing facility shall not exceed specified limits. These limits are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these limits may be determined as stated in Conditions 3, 4, 5, 6, and 7. (9 VAC 5-80-1180 and 9 VAC 5-50-260)
5. O-N Minerals representatives met with DEQ officials on July 24, 2007 to discuss the allegations of violation and remedial measures taken up to the date of the meeting and agreed to the payment of a civil penalty in accordance with regulations set out by the State Air Control Board.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§10.1-1309 and 10.1-1316, the Board orders O-N Minerals, and O-N Minerals voluntarily agrees, to pay a civil charge of **\$4,505.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include O-N Minerals' Federal ID number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of O-N Minerals, for good cause shown by O-N Minerals, or on its own motion after notice to O-N Minerals and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, O-N Minerals admits the jurisdictional allegations contained herein. The parties understand and acknowledge that the Findings of Fact and Conclusions of Law contained herein are the contentions of the Board. Nothing contained herein shall be deemed an admission of law or fact or evidence of the same, or of any violation of any federal, state or local law, statute, regulation or ordinance by O-N Minerals.
4. O-N Minerals consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. O-N Minerals declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of O-N Minerals to any

administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by O-N Minerals to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. O-N Minerals shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. O-N Minerals shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. O-N Minerals shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which O-N Minerals intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and O-N Minerals. Notwithstanding the foregoing, O-N Minerals agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. O-N Minerals petitions the Director or his designee to terminate the Order after it

has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or

- b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to O-N Minerals.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve O-N Minerals from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By appropriate signature below, O-N Minerals voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 4, 2007.

Amy Thatcher Owens
Amy Thatcher Owens, Regional Director
Valley Regional Office
Department of Environmental Quality

O-N Minerals voluntarily agrees to the issuance of this Order.

By: [Signature]
Date: Nov. 29, 2007

Commonwealth of Virginia

City/County of SHENANDOAH

The foregoing document was signed and acknowledged before me this 29th day of
November, 2007, by Spencer Stinson, who is
(name)

General Manager of O-N Minerals, on behalf of O-N Minerals.
(title)

[Signature]
Notary Public

My commission expires: 12/31/2010 ID 169454.